



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

J & F EKMAN, INCORPORATED

PC # 01-6021

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code § 62.1-44.15(8a) and 8(d) between the State Water Control Board and J & F Ekman, Inc., to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the DEQ.
5. "VRO" means the Valley Regional Office of the DEQ.

6. "Ekman" or "the Company" means J & F Ekman, Inc., a Virginia Corporation.
7. "UST" means underground storage tank.
8. "VPSTF" means the Virginia Petroleum Storage Tank Fund
9. "Order" means this document, also known as a Consent Special Order.
10. "NOV" means Notice of Violation.
11. "The Regulation" means Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*
12. "COCI" means the Charlottesville Oil Company, Inc.
13. "CFU" means Carbon Filtration Unit.
14. "The Site" means The Trading Post, a convenience store located near North Garden, Albemarle County.

SECTION C: Findings of Fact and Conclusions of Law

1. The Site has a long history of petroleum contamination and remediation dating to 1988. Prior to March 28, 1991, the USTs on the Site were owned by COCI. Based on a release of petroleum in the mid-1980s, on August 24, 1998, COCI placed a Dual-Phase Soil Vapor Extraction and groundwater pump-and-treat system ("Remediation System") into service at the Site.
2. On March 28, 1991, Ekman registered as owner of five USTs at the Site.
3. On July 7, 2000, COCI's consultant reported free product discovered in Monitoring Well No. 1 ("MW-1") and in a tank basin observation well cap. DEQ assigned PC 01-6021 to Ekman and requested a Release Investigation Report.
4. On December 5, 2000, Ekman submitted a Release Investigation Report with inventory records and passing tank and line tightness test results for all 3 gasoline UST systems on-site. On December 11, 2000, DEQ closed PC 01-6021, assuming that the newly discovered product in MW-1 was the result of the original COCI release and was being drawn into MW-1 by the remediation system and the dropping water table during drought conditions.
5. On October 3, 2002, staff of the VRO conducted a site visit at the Site. During the visit, staff were advised by Ekman that a suspected release of petroleum had occurred at the Site in December 1998 when an underground delivery line was broken during a construction project.

6. During the October 3, 2002, visit at the Site, Mr. John Ekman explained to VRO staff that he did not become aware of the December 1998 construction damage to the underground delivery line until a short time later when a system pressure loss was detected. According to Ekman, the delivery line was leak tested, repaired and placed back into service in early 1999. Contrary to 9 VAC 25-580-190, Ekman failed to report this suspected release to DEQ before the October 3, 2002, visit. On October 10, 2002 PC 01-6021 (Ekman) was reopened.
7. On October 31, 2002, DEQ's Office of Spill Response & Remediation rendered its decision that PC # 01-6021 was the result of negligence and, therefore, the DEQ denied cleanup costs to Ekman under the Virginia Petroleum Storage Tank Fund.
8. On November 12, 2002, DEQ issued NOV No. 02-11-VRO-01 to Ekman citing Ekman for failure to report a release of petroleum product to DEQ within 24 hours of its discovery in apparent violation of 9 VAC 25-580-190 of the Regulation.
9. By letter dated February 5, 2003, DEQ advised Ekman of the confirmed release under PC # 01-6021. DEQ informed Ekman that it was DEQ's belief that the majority of the free product and other contamination remaining on the Site was Ekman's product/contamination. Accordingly, DEQ advised Ekman that it was the responsible party and that responsibility for operation of the Remediation System at the Site was being transferred from COCI to Ekman. In the letter, DEQ advised Ekman that COCI is currently maintaining seven CFUs and that responsibility for continued maintenance of the CFUs may also be transferred to Ekman in the future. DEQ also advised Ekman that COCI's existing Corrective Action Plan ("CAP") remained appropriate for remediation of the Site and, therefore, that development of a new CAP would not be necessary.
10. By letter dated February 5, 2003, DEQ informed COCI that it was no longer responsible for operation of the Remediation System at the Site because DEQ determined that most of the free product and petroleum contamination remaining on the Site was caused when Ekman's contractor struck a product line during the December 1998 construction.
11. Based on an assertion made by Ekman's accountant that Ekman was unable to fund operation of the Remediation System, DEQ agreed to conduct an Ability to Pay ("ATP") analysis of Ekman; accordingly, the Site was placed under State Lead on March 26, 2003, and was to remain there pending completion of an ATP analysis by DEQ's Office of Financial Assurance ("OFA"). On April 22, 2004, OFA determined that Ekman lacks the financial ability to operate the Remediation System but does have the ability to pay a one time civil charge.
12. Based on OFA's determination, operation of the Remediation System at the Site will remain under State Lead.

13. Ekman's failure to report the December 1998 release of petroleum product exacerbated an existing, complex remediation stemming from a release which had impacted multiple domestic water supplies. The Order assesses a civil charge in settlement of the violation. The civil charge includes an assessment of the economic benefit of noncompliance.

SECTION D: Agreement and Order

Accordingly the State Water Control Board, by virtue of the authority granted it pursuant to Va. Code §62.1-44.15(8d), orders Ekman, and Ekman voluntarily agrees to pay a civil charge of **\$15,000** in settlement of the violations cited in this Order.

Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Ekman shall include its Federal Identification Number with the civil charge payment and shall note on the check that the payment is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Ekman, for good cause shown by Ekman, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Ekman admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Ekman consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Ekman declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or

regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Ekman to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Ekman shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Ekman shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ekman shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and,
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

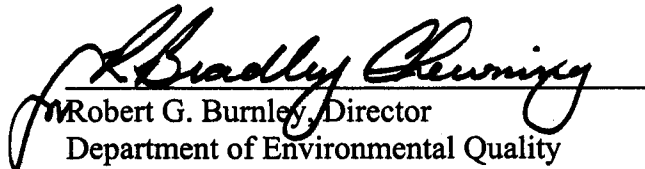
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Ekman intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Ekman. Notwithstanding the foregoing, Ekman agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Ekman. Termination of this Order, or

any obligation imposed in this Order, shall not operate to relieve Ekman from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Ekman voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2ND day of September, 2004.


Robert G. Burnley, Director
Department of Environmental Quality

Ekman voluntarily agrees to the issuance of this Order.

By: John E. Ekman
Date: JULY 28, 2004

Commonwealth of Virginia

City/County of ALBEMARLE

The foregoing document was signed and acknowledged before me this 28th day of July, 2004, by John E. Ekman, who is
(name)

PRESIDENT J. & F. INC.
(title) of Ekman, on behalf of the Corporation.

Jordan B. Roelofs
Notary Public

My commission expires: August 31, 2007



JORDAN B. ROELOFS
NOTARY PUBLIC
COMMONWEALTH
OF VIRGINIA
My Commission Expires
August 31, 2007